

A GUIDE TO LOCAL LAND USE PLANNING **FOR AGRICULTURE OPERATIONS**

Model Ordinances

MULTIPLE AGRICULTURAL DISTRICTS

In a multiple tier agricultural zone structure, land currently zoned agricultural is divided to reflect different types of modern agriculture. The primary advantage of this model is that counties have proactively made determinations of the growth patterns of the county and established the best sites for agricultural uses. In addition, it minimizes conflicting uses by delineating certain areas for agriculture and areas for rural residential development. However, this requires a comprehensive assessment of the entire county, which entails substantial time and resources.

For multiple agricultural zones to be effective, the concept cannot be merely set forth in the ordinance. The zones must be designated and implemented. Large areas must be proactively carved out for certain uses, not just isolated quarter-quarter areas through repeated rezones. The zones can be implemented in increasing intensity of use to create a buffer.

In determining livestock production zones, a Geographic Information System (GIS) assessment of areas currently zoned agricultural should be conducted. Factors to be identified in this assessment include prime farmland areas, existing livestock facilities, location of cities and towns, current housing and density, parks and other public areas, floodplains and wetlands, and designated growth areas where infrastructure has been extended or planned. Agriculturally zoned land adjacent to certain areas should be designated rural estate or general agricultural. A preliminary economic analysis should also be conducted when delineating agricultural zones. This analysis provides a county with information on the current economic impact of agriculture to the community and opportunities for growth in certain sectors.

The term CFO refers to the definition of a Confined Feeding Operation found at 327 IAC 16-2-5 and CAFO refers to the definition of a Concentrated Animal Feeding Operation found at 327 IAC 5-4-3.

5.40 A-1 GENERAL AGRICULTURAL DISTRICT

5.401 Intent of District

The intent of this district is to provide for and protect substantial areas for a broad variety of agricultural uses where little or no urbanization has occurred or is planned to occur. Residential development is permitted by special exception, which provides the opportunity to consider whether the dwelling is related to the operation and maintenance of agricultural uses in

this district. It is the intent of this district to limit all non farm residential uses to provide for large areas of contiguous farm land.

5.402 Uses

A. Permitted Uses

See Table A, Official Schedule of Uses

B. Special Exceptions

See Table A, Official Schedule of Uses

5.403 Development Standards

A. Maximum Lot Size [one (1) acre to two (2) acres]

B. Density

One (1) dwelling unit per twenty (20) acres

Note: To preserve large contiguous lots of agricultural land, there should be a requirement for cluster development. For example, if an 80 acre tract can have 4 splits, with a maximum lot size of 1½ acres, there should be a requirement that those dwellings be clustered on one portion of the tract. It is important to note that requiring cluster development for rural subdivisions may entail revisiting the county's subdivision control ordinance. In addition, the ordinance can set forth how many splits are allowed before a tract must be divided according to the subdivision control ordinance. There should also be a provision allowing larger subdivision of tracts if the land is going to be used for an agricultural use.¹

C. Yard Setbacks

A minimum yard setback shall be measured from the property line and shall be provided as follows:

Minimum Front Yard [fifty (50) feet to sixty (60) feet]

D. Maximum Structure Height

No structure shall be more than [thirty (30) to fifty (50) feet] from the ground in height, except grain elevators, grain storage or other agricultural handling or processing equipment, unless otherwise authorized by the Board of Zoning Appeals.

E. Additional Standards

1. Any new residential dwelling or subdivision development is permitted in this zone only by special exception.

¹ Bowers, D. and T. Daniels, *Holding Our Ground*, 121 (1997).

Note: In determining whether to grant a special exception for residential development, the Board of Zoning Appeals (BZA) should give consideration to whether the dwelling is related to a farm operation. For example, this would include owners, family members employed in the agricultural operation on the premises, or tenants involved in the agricultural operation on the premises. If the dwelling is not related to a farm operation, consideration should be given to the impact of the proposed development on the surrounding agricultural community. If the application for rural subdivision development is approved by the Board of Zoning Appeals, it must be developed according to the subdivision control ordinance.

2. All applicants, developers, or landowners who develop any use in this district shall be required as part of the special exception process to sign the following agricultural clause and record it as a deed restriction to bind successive owners:

“Grantee and their successors in title are on notice and understand that this residence is being built in a predominately agricultural area and that farming operations will be practiced in the area of this residence. With this understanding, the grantee and successors in title forego their right to bring claim against any farmer in the area who has not been negligent.”²

3. A CFO or CAFO permitted by special exception shall have Indiana Department of Environmental Management (IDEM) approval and be in compliance with IDEM regulations.

4. Reciprocal Separation Distance Provision

- A single family dwelling or subdivision permitted by special exception must not locate within [seven hundred (700) feet to eight hundred (800) feet] of an existing livestock facility, except for a dwelling related to the farm operation.
- A CFO or CAFO permitted by special exception may not locate within [seven hundred (700) feet to eight hundred (800) feet] of an existing residence, except for a dwelling related to the farm operation.³

Note: Separation distances are measured from structure to structure. The "structure" for purposes of livestock facilities can be either the animal housing area or waste

² The Center for Rural Pennsylvania, *Zoning for Farming: A Guidebook for Pennsylvania Municipalities on how to Protect Valuable Agricultural Lands*, 43 (1995).

³ Bowers, D. and T. Daniels, *Holding Our Ground*, 113 (1997).

management area. The distance is not measured from the fields on which manure is applied.

5. Pre-Existing Non-Conforming Uses

An existing CFO or CAFO in this zone that is a non-conforming use may expand their operation.

6. All applicants, developers, landowners who develop any residential use within one-half (1/2) mile of this district shall be required to enter into an agricultural clause with an accompanying deed restriction to bind successive owners. In addition, residential subdivision of property in a general agricultural zone or within three hundred (300) feet of such zone must address the following as part of the Primary Approval:

- a. Off site surface drainage impacts;
- b. Subsurface tiling systems impacts;
- c. Security of ag zoned property from residential uses

5.50 A-2 INTENSIVE AGRICULTURAL DISTRICT

5.501 Intent of District

The Intensive Agricultural District is intended to provide areas within the County for agricultural related industries and confined feeding operations. Due to the intensive nature of the agricultural uses in this district, it is critical that residential development permitted by special exception is limited to dwellings related to a farm operation. Intensive agricultural districts should be buffered from residential uses through graduated use of less intensive agricultural districts.

5.502 Uses

A. Permitted Uses

See Table A, Official Schedule of Uses

B. Special Exceptions

See Table A, Official Schedule of Uses

5.503 Development Standards

A. Minimum Lot Size [ten (10) acres to twenty (20) acres]

Note: A smaller minimum lot size is used in this approach to provide for intensive agriculture uses that do not require a large tract of land. Low density residential development is controlled through the special exception procedure for residences in this zone. In the absence of such procedure, a minimum lot size of [forty (40) acres to fifty (50) acres] is recommended.

B. Minimum Setbacks

1. A CFO or CAFO shall have a setback of:
 - a. Minimum setback requirement is [seven hundred fifty (750) feet to eight hundred fifty (850) feet] from a residentially zoned area.
 - b. This setback shall not apply to fences for areas where animals graze on pastures.

Note: The separation distance from a residentially zoned area is measured from the edge of the zoning district to the livestock housing structure.

2. A minimum yard setback for a CFO or CAFO shall be measured from the property line and shall be provided as follows:

Minimum Front Yard [two hundred (200) feet to three hundred (300) feet]

C. Maximum Structure Height

No structure shall be more than [thirty (30) to fifty (50) feet] from the ground in height, except grain elevators, grain storage or other agricultural handling or processing equipment, unless otherwise authorized by the Board of Zoning Appeals.

D. Additional Standards that apply

1. Any residential use in this zone is permitted only by special exception.

Note: In determining whether to grant the special exception, it is strongly encouraged that the Board of Zoning Appeals (BZA) only permit residences related to a farm operation. For example, this would include owners, family members employed in agricultural operation on the premises, or tenants involved in the agricultural operation on the premises.

2. All applicants, developers, landowners who develop a residential use within this district or one-half (1/2) mile of this district shall be required to enter into an agricultural clause with an accompanying deed restriction to bind successive owners. In addition, residential subdivision of property within three hundred (300) feet of an intensive agricultural zone must address the following as part of the Primary Approval:

- a. Off site surface drainage impacts;
- b. Subsurface tiling systems impacts;
- c. Security of ag zoned property from residential uses

3. A CFO or CAFO shall have IDEM approval and be in compliance with IDEM regulations.

4. Pre-Existing Non-Conforming Uses

A new CFO or CAFO may not be sited within [seven hundred (700) feet to eight hundred (800) feet] of an existing single family residence or subdivision, except for a residence related to the farm operation.⁴

⁴ Iowa Department of Natural Resources, *Results of Animal Feeding Operations Odor Study*, 6 (2006).

5.60 RE RURAL ESTATE DISTRICT

5.601 Intent of District

The Rural Estate (RE) District provides for a variety of less intensive agricultural uses, while accommodating some low density single family dwellings and subdivisions in appropriate locations in the County. This district should be located within incorporated towns and areas adjacent to the incorporated boundary. If the county has an advisory plan commission, this would be within the extraterritorial jurisdiction area, which can be up to two miles. However, subdivisions are encouraged to be located closer to or adjacent to established municipalities where public utilities can be provided to the subdivision. This district was created to accommodate and provide opportunities for rural development while excluding residential uses from the agricultural districts to promote and protect the agricultural economy. Subdivisions are preferred over single lot dwellings to encourage more compact and contiguous development.

5.602 Uses

A. Permitted Uses

See Table A, Official Schedule of Uses

B. Special Exceptions

See Table A, Official Schedule of Uses

5.603 Development Standards

A. Maximum Lot Size [one (1) acre to two (2) acres]

Note: Maximum lot sizes encourage more contiguous, compact growth in rural areas. A larger maximum lot size may be used for rural estates than for subdivisions in a rural estate district. A minimum lot size should be used in conjunction to establish the minimum building lot necessary for a septic system and second leach field.

B. Minimum Lot Width [one hundred fifty (150) feet to two hundred fifty (250) feet]

C. Yard Setbacks

A minimum yard setback shall be measured from the property line and shall be provided as follows:

1. Minimum Front Yard [fifty (50) feet to sixty (60) feet]
2. Minimum Rear Yard [twenty (20) feet to thirty (30) feet]
3. Minimum Side Yard [twenty (20) feet to thirty (30) feet]

D. Maximum Structure Height [twenty (20) feet to thirty (30) feet]

E. Parking [refer to ordinance section on parking and loading standards]

F. Landscaping [refer to ordinance section on landscaping]

G. Signage [refer to ordinance section on sign standards]

H. Additional Standards that apply

1. All driveways shall be located off the subdivision road. No driveways shall be located off a county or municipal road.
2. For subdivisions of parcels to create new parcels, lots or tracts see the subdivision control ordinance for standards.
3. All single family residential uses and subdivision development in this district shall sign an agricultural clause with an accompanying deed restriction to bind successive owners.
4. Reciprocal Separation Distance Provision - Any single family dwelling or subdivision must not locate within [six hundred (600) feet to seven hundred (700) feet] of an existing livestock facility.
5. Nonconforming Uses - Any livestock facility in a rural estate district that is a pre existing non-conforming use may expand their operation.

Note: A non-conforming use can be required to comply with requirements to which conforming agricultural uses are subject (see IC § 36-7-4-616).

TABLE A: OFFICIAL SCHEDULE OF USES

Use	General Ag	Intensive Ag	Rural Estate	Forestry (see note)
Farm Residence	S	S	P	S
Farm Worker Housing	S	S	P	S
Non-farm Residence	S	S	P	S
Residential Subdivision	S	X	P	X
Agricultural Buildings	P	P	S	P
Accessory Structures	P	P	P	P
Row Crop	P	P	P	P
Livestock Production not Requiring an IDEM Permit	P	P	S	S
Confined Feeding Operations (CFO)	S	P	X	X
Concentrated Animal Feeding Operations (CAFO)	S	P	X	X
Meat Processing	S	P	X	X
Grain Elevator	P	P	X	X
Farm Supply Store	P	P	S	X
Farm Chemical Supply Dealer	P	P	X	X
Farm Equipment Dealer	P	P	X	X
Farm Equipment Repair (Accessory)	P	P	X	P
Farm Equipment Repair (Commercial)	P	P	X	X
Operation of any machinery, vehicles, and other uses customarily incidental to agricultural uses being pursued on the premises.	P	P	P	P
Sawmill	S	P	X	P
Timber Processing	S	P	X	P

P Permitted Use
 S Special Exception
 X Excluded Use

Note: Counties in the state with a large forestry industry may want to include a forestry district.

SITE SCORING SYSTEM

The site scoring system is a mechanism to approve local application for a new livestock facility through achievement of a predetermined score based on a series of science-based criteria. In determining these criteria, consideration was given to traditional zoning and land use considerations, university research on manure management and application practices, and Indiana's regulatory structure. It is important to note that better scientific data is needed to tailor the points awarded for additional setback distances from structures.

The site scoring system contains several operational conditions to approval. For example, the system awards points for odor abatement practices utilized in the animal housing facility and when conducting manure application. A community that is considering this approach needs to assess whether they have the resources to monitor continued adherence to these conditions.

The primary advantages of this approach are:

- Clear, objective criteria that provide for efficient decision making for local plan departments.
- Provides an applicant with a clear sense of what is expected to receive a local permit.
- Recognizes the difference in farms by providing many options to meet the minimum score.

A disadvantage of this approach is the case-by-case analysis versus a proactive designation of certain zones for livestock production.

Process: With this approach, a county implements the following minimal setbacks:

- [600 - 650] feet from an existing residence or subdivision development
- [900 - 1000] feet from a public use area
- [900 - 1000] feet from a religious or educational institution

Note: Additional minimal setbacks for other structures may be added if a county determines they are necessary.

The applicant must meet these setbacks and achieve a minimum overall score to be approved. The scoring system application is reviewed administratively by the plan director. Because the requirements are clear and objective, it is not necessary for the plan commission to review each application to determine whether it meets the minimum overall score for local approval.⁵

⁵ Minnesota Department of Agriculture, *Livestock, Local Governments, and Land Use*, 23 (2006).
Hutcheson, Scott, Purdue University Cooperative Extension Service Communities on Course Land Use, *Plan Commission Public Hearings: A Citizen's Guide*, 4 (1999).

Example: 8000 head swine finishing facility assuming minimum setbacks of 600 feet from residences, 900 feet from a public use area, and 900 feet from a religious or educational institution.

Site and Facility Characteristics -

- 1000 feet from nearest non-farm residence = 45 points
- 2640 feet from nearest public use area = 25 points
- 2640 feet from nearest school = 35 points
- Odor abatement measures (covered manure storage / shelterbelt) = 50 points
- Inject manure = 30 points
- Adequate truck turnaround = 25 points
- Feeding and watering system to reduce water use = 20 points
- Additional property taxes = 15 points

Total Possible Points = 400

Total for Proposed Facility = 245 points

Proposed Site and Facility Characteristics

The following scoring criteria apply to the site of a proposed CFO or CAFO. The term CFO refers to the definition of a Confined Feeding Operation found at 327 IAC 16-2-5 and CAFO refers to the definition of a Concentrated Animal Feeding Operation found at 327 IAC 5-4-3.

The proposed site must obtain a minimum overall score of 240 - 260 to be approved.

1. Additional separation distance, above minimum setbacks, from proposed confinement structure to the closest residence not owned by the owner of the confinement feeding operation.

	Score
0 feet to 250 feet	25
251 feet to 500 feet	45
501 feet to 750 feet	65
751 feet to 1,000 feet	85
1001 feet or more	100

2. Additional separation distance, above minimum setbacks, from proposed confinement structure to the closest public use area.

	Score
0 feet to 250 feet	5
251 feet to 500 feet	10
501 feet to 750 feet	15
751 feet to 1,000 feet	20
1,001 feet or more	25

"Public use area" - a portion of land owned by the United States, the state, or a political subdivision with facilities which attract the public to congregate and remain in the area for significant periods of time. Facilities include, but are not limited to, picnic grounds, campgrounds, cemeteries, lodges, shelter houses, playground equipment, lakes, and swimming beaches. It does not include a highway, road right-of-way, parking areas, woodlands, recreational trails or other areas where the public passes through, but does not congregate or remain in the area for significant periods of time.

3. Additional separation distance, above minimum setbacks, from proposed confinement structure to the closest educational institution; or religious institution

	Score
0 feet to 250 feet	5
251 feet to 500 feet	10
501 feet to 750 feet	15
751 feet to 1,000 feet	20
1,001 feet to 1,250 feet	25
1,251 feet to 1,500 feet	30
1,501 feet or more	35

"Educational institution" - a building in which an organized course of study or training is offered to students enrolled in kindergarten through grade 12 and served by local school districts, accredited or approved nonpublic schools, area educational agencies, community colleges, land grant institutions of higher education, and accredited independent colleges and universities. It is important to note that home schools do not fall within this definition.

"Religious institution" - a building in which an active congregation is devoted to worship.

4. Proposed confinement structure has implemented one or more of the following odor abatement measures: ⁶

Tier 1 (> 25% effectiveness)

- Air quality modeling results from the Purdue Agricultural Air Quality Laboratory (PAAQL) Odor Setback Guideline are less than or equal to facility setbacks.
- Oil sprinkling
- Filtration (biofilters or biomass filters installed on appropriate ventilation and pit fans)
- Anaerobic Digester
- Permeable cover or impermeable cover for manure storage and lagoon
- Liquid manure storage structure is covered
- Composting
- Surface of lagoon is aerated

⁶ University of Nebraska - Lincoln, National Center for Manure and Animal Waste Management, *Lesson 25 Manure Treatment Options*, <http://www.lpe.unl.edu> (2007).

Lorimor, Jeff, National Center for Manure and Animal Waste Management Model Certification Project, *Module 4: Air Quality around Production Facilities and Land Application Sites* (2003).

Tier 2 (up to 25% effectiveness)

- Utilization of landscaping around confinement structure (shelterbelts)
- Windbreak walls
- Diet formulation (use of feeds that reduce odor and nutrient excretion)
- Manure additives
- Solids separation
- Other strategies approved by the Purdue Agricultural Air Quality Laboratory (PAAQL).⁷

	Score
Two Tier 1 odor abatement measures implemented; or an anaerobic digester will be utilized at the facility.	60
Tier 1 and Tier 2 odor abatement measure implemented	50
Two Tier 2 odor abatement measures implemented; or One Tier 1 odor abatement measure implemented.	40
Tier 2 odor abatement measure implemented.	30

"Aerobic structure" – *a animal feeding operation structure which relies on aerobic bacterial action which is maintained by the utilization of air or oxygen and which includes aeration equipment to digest organic matter. Aeration equipment shall be used and shall be capable of providing oxygen at a rate sufficient to maintain an average of 2 milligrams per liter dissolved oxygen concentration in the upper 30 percent of the depth of manure in the structure at all times.*

"Covered" - *organic or inorganic material, placed upon an animal feeding operation structure used to store manure, which significantly reduces the exchange of gases between the stored manure and the outside air. Organic materials include, but are not limited to, a layer of chopped straw, other crop residue, or a naturally occurring crust on the surface of the stored manure. Inorganic materials include, but are not limited to, wood, steel, aluminum, rubber, plastic, or Styrofoam. The materials shall shield at least 90 percent of the surface area of the stored manure from the outside air. Cover shall include an organic or inorganic material which current scientific research shows reduces detectable odor by at least 75 percent. A formed manure storage structure directly beneath a floor where animals are housed in a confinement feeding operation is deemed to be covered.*

"Shelterbelt" - *Trees, shrubs, and earthen berm must reach a cumulative minimum height of six (6) feet prior to startup of operation. Minimum of two rows of trees and shrubs, of fast and/or slow-growing species.*

Note: Grouping of abatement measures is based on Iowa State University Extension *Practices to Reduce Odor from Livestock Operations*. A chart is attached as Appendix A of this document. A procedure should be in place to allow a livestock producer to change an odor abatement measure in the future if the new measure is proven to have equal or improved effectiveness.⁸

⁷ Purdue Agriculture Air Quality Laboratory, <http://pasture.ecn.purdue.edu/~odor/index.html>

⁸ Iowa State University Extension, *Practices to Reduce Odor from Livestock Facilities Flowchart* (2005).

5. Adoption and implementation of one of the following manure application practices to reduce odor dispersion:

	Score
Liquid Manure - Injected	30
Incorporated within 24 hours of application.	20
Dry Manure - Land applied and incorporated within 24 hours.	30

Note: There should be an exception stating that injection of manure is not required in conditions or situations when injection is not possible. For example, if abnormally adverse field conditions do not allow for timely manure injection or incorporation in the Fall or if a water line would break causing the need for an emergency manure application. It is important to note that a county may want to award points for producers that sell their livestock manure according to IDEM regulations (see 327 IAC 15-15-15 and 327 IAC 16-10-5).

6. Proposed confinement site has a suitable truck turnaround area so that semi-trailers do not have to back into the facility from the road.

	Score
Truck turnaround	25

- The turnaround area should be all-truck turnaround without backing into the public road, through T-turns or a turning area with a radius of at least 120 feet. The entire drive and turn-around area must have an all-weather surface to minimize dust and to avoid caking of mud on truck wheels.
- If there will be trucks parked or stored on the site overnight or long-term, there should be one additional truck parking space for each such truck; the parking space(s) must not reduce or impede the turn-around area.

7. Construction permit application includes livestock feeding and watering systems that significantly reduce water use.

	Score
Wet/dry feeders or other feeding and watering systems that significantly reduce water use.	20

8. Construction permit applicant's animal feeding operation environmental violation history for the last five years at all facilities in which the applicant has an interest.

	Score
Permit applicant has held an interest in a livestock facility for 5 years or more. The applicant does not have an environmental violation in the last five years that resulted in a discharge.	20
Permit applicant has an interest in a newly constructed livestock facility that has been in operation for 2 - 5 years. The applicant does not have an environmental violation over this period that resulted in a discharge.	15

"Interest" - Ownership of a confinement feeding operation as a sole proprietor or a 10 percent or more ownership interest held by a person in a confinement feeding operation as a joint tenant, tenant in common, shareholder, partner, member, beneficiary or other equity interest holder. Ownership interest is an interest when it is held either directly, indirectly through a spouse or dependent child, or both.

"Violation" - An environmental violation is an order from the Indiana Department of Environmental Management or comparable state or federal agency, or final court ruling against the construction permit applicant for environmental violations related to an animal feeding operation that resulted in a discharge.

Note: This criterion only applies to permit holders. If an applicant has never held an interest in a facility with a confined feeding permit, no points are awarded.

9. Construction permit applicant can lawfully claim a Homestead Tax Exemption on the site where the proposed confinement structure is to be constructed

-OR -

The construction permit applicant is the closest resident to the proposed confinement structure.

	Score
Site qualifies for Homestead Tax Exemption or permit applicant is closest resident to proposed structure	20

"Applicant" includes persons who have ownership interests. "Interest" means ownership of a confinement feeding operation as a sole proprietor or a 10 percent or more ownership interest held by a person in a confinement feeding operation as a joint tenant, tenant in common, shareholder, partner, member, beneficiary or other equity interest holder. Ownership interest is an interest when it is held either directly, indirectly through a spouse or dependent child, or both.

10. Demonstrated community support.

	Score
Letter of support from fifty one (51) percent of property owners within a two mile radius, and a local official or state legislator.	20

11. Adoption and implementation of an environmental management system (EMS) recognized by the Indiana Department of Environmental Management;
-OR-
the applicant has a Natural Resources Conservation Service (NRCS) approved soil conservation plan for all acreage on which manure is applied.

	Score
EMS or NRCS conservation plan	20

12. Added economic value based on quality job development (salary equal to or above department of workforce development median);
-OR -
the proposed structure increases property tax base in the county.⁹

	Score
Economic value to local community	15

13. Construction permit application contains a closure plan.

	Score
Closure plan	10

Note: The closure plan must be kept on site with the manure management plan records. The closure plan should address the following issues: emptying of manure storage structure, application of stored manure, teardown of building(s), disposal of building materials at an approved site, and removal of lagoon solids and fill (if applicable).

⁹ Chase, Rick, Purdue University Cooperative Extension Service Communities on Course Land Use, *Agricultural Land Protection in Indiana*, 2 (1999).

LIMITED USE WITH DEVELOPMENT STANDARDS

This is an objective approach through setting forth clear development standards within the ordinance itself versus having an applicant go through a special exception process. With a special exception process, the decision is usually based on subjective factors that provide an applicant little certainty as to whether they will receive their local permit. In determining the limited use standards, consideration was given to traditional zoning functions, university research on manure management and application practices, and the parameters of state regulation of livestock operations.

With this approach, a development plan can be reviewed either by a plan commission or plan staff for conformance with the ordinance standards. This review does not require a public hearing.¹⁰ However, if a plan commission delegates development plan approval, the delegation must be clearly stated in the zoning ordinance and include the duties granted, the procedures for review, and procedures for an appeal (see IC 36-7-4-1402). A site plan decision made by plan staff can be made without a public hearing if the zoning ordinance provides for an appeal of the decision directly to the plan commission.

The term CFO refers to the definition of a Confined Feeding Operation found at 327 IAC 16-2-5 and CAFO refers to the definition of a Concentrated Animal Feeding Operation found at 327 IAC 5-4-3.

CFO and CAFO Development Standards

437.1 The application for Improvement Location Permit should include a site plan, which provides the following information:

- A scale drawing showing the dimensions and the shape of the lot to be built upon, the size and location of existing buildings, and the location and dimensions of the proposed building or alteration;
- The boundaries of the operation;
- The general topography of the area;
- The location of the manure storage and treatment facility;
- The location of streams, drainage ditches, highways, lakes, recreational areas;
- The location of all residential dwellings, businesses, public buildings, recreational areas within a one quarter (1/4) mile radius of the operation;
- The application must include any other information that is necessary for the administration and enforcement of this ordinance, including but not limited to existing or proposed uses of the buildings and land.

¹⁰ Hutcheson, Scott, Purdue University Cooperative Extension Service Communities on Course Land Use, *Plan Commission Public Hearings: A Citizen's Guide*, 4 (1999).
Minnesota Department of Agriculture, *Livestock, Local Governments, and Land Use*, 23 (2006).

437.2 Compliance with County Drainage Board requirements for stormwater and runoff (i.e. settling basins, stormwater or retention ponds).

437.3 A sewage permit for the building or structure has been issued by the county health department.

Note: Some septic permits are issued at the state level. This provision should be included only if it is required in that county.

437.4 A proposed CFO or CAFO must submit a route plan to the County Highway Department.

Note: A minimum driveway width for entrances into livestock operations may be set to prevent damage to the public road on which the entrance is situated.

437.5 A proposed CFO or CAFO must abide by the rule set forth in 312 IAC 12 Water Well Drilling and Ground Water and register all wells capable of withdrawing over 100,000 gal. per day or 70 gal per minute.

437.6 A CFO or CAFO must meet the following setbacks:

- Waste management system shall not be within [two hundred (200) feet to three hundred (300) feet] from any county road right of way.
- Waste management system shall not be within [one hundred (100) feet to two hundred (200) feet] of any property boundary.

Maximum required separation distance for a CFO or CAFO will be [one thousand (1000) feet to one thousand one hundred (1100) feet] from a residential district and [nine hundred (900) feet to one thousand (1000) feet] from an existing residence, except for a residence related to the farm operation.

Tier 1 Separation Distance Reduction - The maximum required separation distance will be reduced to [seven hundred (700) feet to eight hundred (800) feet] from a residential district and [six hundred (600) feet to seven hundred (700) feet] from an existing residence as long as one of the following odor control technologies are employed: ¹¹

- Air quality modeling results from Purdue Agricultural Air Quality Laboratory (PAAQL) Odor Setback Guideline are less than or equal to the Tier 1 separation distances.
- Filtration (Biomass filter, Biofilter, Wet Scrubbers)
- Anaerobic Digestion

¹¹ University of Nebraska - Lincoln, National Center for Manure and Animal Waste Management, *Lesson 25 Manure Treatment Options*, <http://www.lpe.unl.edu> (2007).

Lorimor, Jeff, National Center for Manure and Animal Waste Management Model Certification Project, *Module 4: Air Quality around Production Facilities and Land Application Sites* (2003).

- Permeable or Impermeable Cover for manure storage and lagoon
- Oil Sprinkling
- Composting
- Surface of lagoon Aerated

Tier 2 Separation Distance Reduction - The maximum required separation distance will be reduced to [eight hundred (800) feet to nine hundred (900) feet] from a residential district and [seven hundred (700) feet to eight hundred (800) feet] from an existing residence as long as one of the following odor control technologies are employed:

- Air quality modeling results from Purdue Agricultural Air Quality Laboratory (PAAQL) Odor Setback Guideline are less than or equal to the Tier 2 separation distances.
- Diet formulation (use of feeds that reduce odor and nutrient excretion)
- Shelterbelts (see Section 437.7)
- Windbreak walls
- Reducing manure loading rates for lagoon (solids separation)
- Manure additives
- Other strategies approved by the Purdue Agricultural Air Quality Laboratory (PAAQL).¹²

Note: The separation distance from a residentially zoned area is measured from the edge of the zoning district to the livestock housing structure. Grouping of abatement measures is based on Iowa State University Extension *Practices to Reduce Odor from Livestock Operations*. This chart is attached as Appendix A of this document.¹³

437.7 Shelterbelt requirements

- Trees, shrubs, and earthen berm must reach a minimum cumulative height of six (6) feet prior to startup of operation.
- Minimum of two rows of trees/shrubs.

437.8 No limited use permit shall be issued if the applicant has a current interest, or owned an interest at the time of violation, of a CFO or CAFO that incurred a final judgment in an administrative, civil, or criminal enforcement action if that violation:

- resulted in a discharge and released manure that crossed a property boundary;
- was not corrected immediately or within a reasonable time frame as specified in a written notification of the violation by an Indiana

¹² Purdue Agriculture Air Quality Laboratory, <http://pasture.ecn.purdue.edu/~odor/index.htm>.

¹³ Iowa State University Extension, *Practices to Reduce Odor from Livestock Facilities Flowchart* (2005).

Department of Environmental Management (IDEM) representative or comparable local, state, or federal regulatory agency; and

- occurred within the five (5) years prior to application submittal.

"Interest" - means ownership of a confinement feeding operation as a sole proprietor or a 10 percent or more ownership interest held by a person in a confinement feeding operation as a joint tenant, tenant in common, shareholder, partner, member, beneficiary or other equity interest holder. Ownership interest is an interest when it is held either directly, indirectly through a spouse or dependent child, or both.

437.9 A CFO or CAFO should not locate any portion of the waste management system within the 100 year floodplain unless a FEMA "Floodproofing Certificate" is provided and the waste management system access is at least 2 feet above the 100 year flood base elevation.

Note: A "waste management system" does not include the land application area.

437.10 Location of a CFO or CAFO within the extra-territorial zoning jurisdiction of an incorporated city or town.

Note: This limitation can be tied to population size and consideration should be made regarding what direction(s) a municipality has planned for growth.

Additional Standards for Agricultural Zones

437.11 Any new dwelling or new subdivision development in an agricultural zone is permitted only by special exception. As a condition to receiving a special exception, the grantee must sign an agricultural clause that must be accompanied by a deed restriction to bind successive owners:

*"Grantee / Owners of said lot(s) and their successors in title are on notice and understand that this residence / subdivision will be built in a predominately agricultural area and that farming operations, to include livestock operations, will be practiced in the area of this residence / subdivision. With this understanding, grantee / all owners of the lot(s) in this subdivision and their successors in title forego their right to bring claim against any farmer in the area who has not been negligent."*¹⁴

Note: In determining whether to grant a special exception for residential development, the Board of Zoning Appeals (BZA) should give consideration to whether the dwelling is related to a farm operation. If the dwelling is not farm

¹⁴ American Farmland Trust, *Saving American Farmland: What Works*, 62 - 63 (1997).

related, consideration should be given to the impact of the proposed development on the surrounding agricultural community.

- 437.12 Reciprocal Separation Distance Provision** - Any new dwelling not related to the farm operation or new subdivision development permitted by special exception must not locate within [seven hundred (700) feet to eight hundred (800) feet] of an existing CFO or CAFO. If a variance is granted from this standard, the party obtaining the variance shall be required to enter into the following covenant protecting the livestock facility's right to operate:

"In accepting this deed, grantees acknowledge that surrounding land is agricultural in usage; and grantees, and their successors in interest, are precluded from attempting to enjoin any farm operation within [seven hundred (700) feet to eight hundred (800) feet] because of nuisances which might result from said operation."

- 437.13 Non-Conforming Uses** - An existing CFO or CAFO, which is a pre-existing non conforming use, may expand their operation.

Note: The right of existing livestock operations to expand is governed by the Agricultural Nonconforming Uses Clause (see IC § 36-7-4-616). Expansion requirements should be evaluated for conformance with this section.

OVERVIEW OF AGRICULTURAL ZONING TOOLS

To achieve effective agricultural zoning, several zoning tools must be used in conjunction. The following tools are used throughout the model zoning ordinance concepts:

1. Odor Setback Guideline

Odor control is a major concern of local government in regulating livestock facilities. The use of atmospheric air to dilute odors from livestock facilities by appropriate setback distances is still the most popular and cost-effective strategy to reduce odor nuisance. However, the determination of science-based odor setbacks for livestock facilities is a difficult and complex problem with only limited supporting data.

A simple-to-use, site-specific setback guideline was developed by Purdue University for swine production systems. This guideline considers facility size, orientation and shape, wind frequency, land use, topography, building design and management, manure handling characteristics, and odor abatement effectiveness. Odor emission factors were based in part on actual odor emission measurements from livestock buildings.

Growing IN Agriculture (GINA) is currently working with Purdue University to further develop the odor abatement variables and make the guideline applicable to all livestock species. GINA is an Indiana Soybean Alliance program with the mission of developing Indiana's livestock industry in a manner that is environmentally safe, socially responsible, and economically viable. Supporting organizations include Indiana Farm Bureau, Indiana Pork, Indiana Beef Cattle Association, and the Indiana State Department of Agriculture.

The Odor Setback Guideline can be accessed from the Purdue Agricultural Air Quality Laboratory (PAAQL) website:

<http://pasture.ecn.purdue.edu/~odor/setback.html>

2. Reciprocal Separation Distance

When a community is revising its agricultural zoning ordinance, provisions for non conforming agricultural and residential uses are critical. Traditionally, a separation distance has been established for proximity of a new livestock facility to an existing residence. This is important and has been utilized throughout the model ordinances. The reciprocal separation distance includes an additional requirement for the proximity of a new

residence to an existing livestock facility. This is an effective tool to protect non conforming, pre existing uses of land and to minimize the potential for conflicting land uses.

3. Agricultural Clause

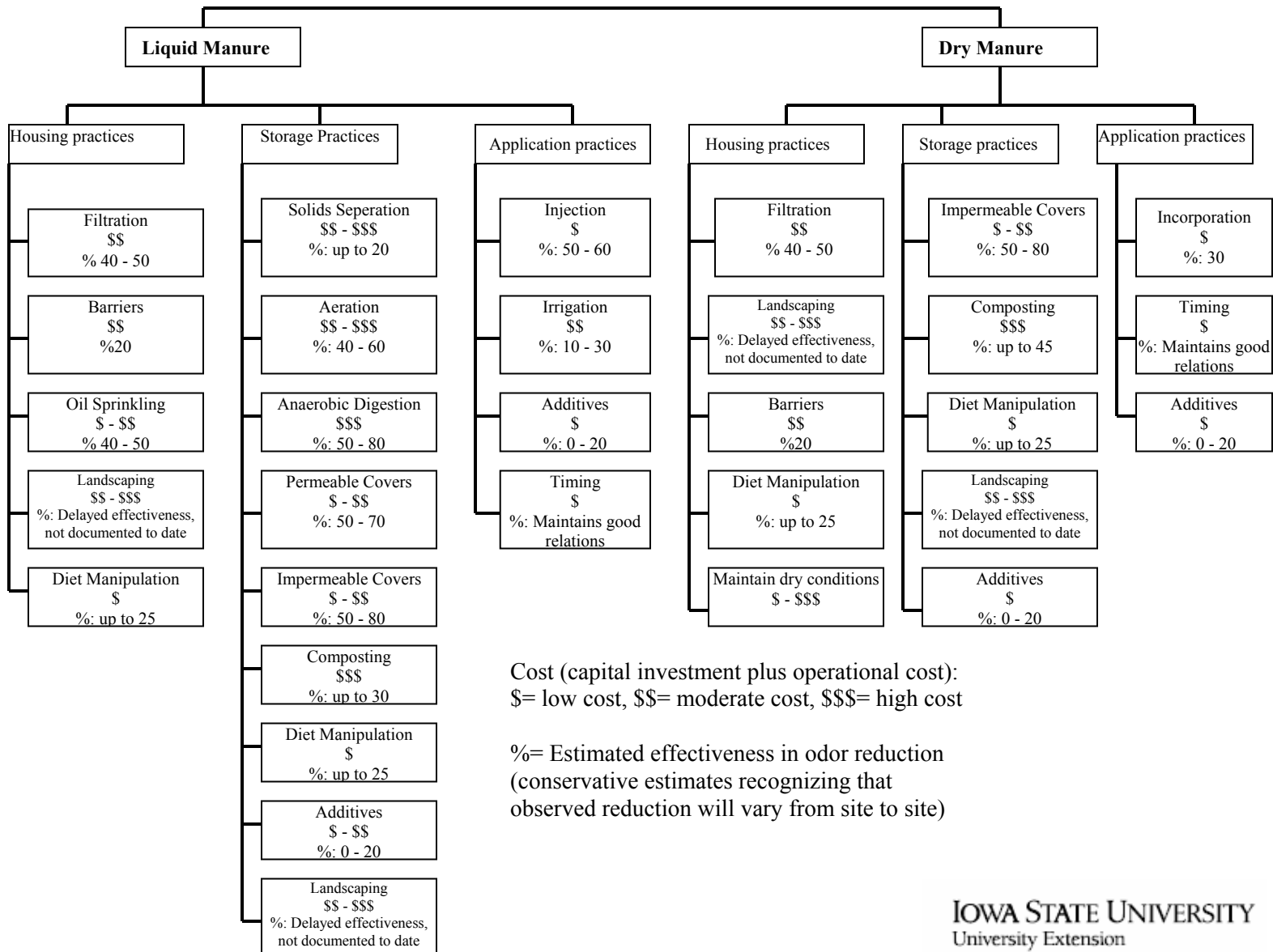
A key principal of effective zoning regulation is promoting notification. An agricultural clause has the advantage of putting individuals who are moving to an agricultural zone on notice that they may experience noise, dust, and odor associated with generally accepted farming practices. This can be used as a condition to a permitted use, or in conjunction with a special exception for residential development in an ag zone. Appendix B contains a template agricultural clause developed by Indiana Farm Bureau.

It is important to note that use of an agricultural clause does not preclude the ability of a landowner to sue for nuisance. The landowner can still file a nuisance action and the presiding judge takes the agricultural clause under consideration. The judge will determine whether the farm operator has been negligent. In making this determination, the judge will consider whether that operator is engaging in generally accepted farming practices in compliance with applicable regulations. Several states have used the agricultural clause as an effective notification tool.

APPENDIX A

Practices to Reduce Odor from Livestock Operations Flowchart

Practices to control odor emissions associated with livestock can be applied to animal housing areas, manure storage areas, and land where manure is applied. This fact sheet is designed to provide producers with information on relative costs and effectiveness of odor control practices. This fact sheet accompanies, *Practices to Reduce Odor from Livestock Operations*, (PM 1970a).



IOWA STATE UNIVERSITY
University Extension

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APPENDIX B

NOTICE OF AGRICULTURAL ACTIVITY

TO: ALL APPLICANTS FOR LOCATION IMPROVEMENT PERMITS FOR HOMES IN AGRICULTURAL ZONED AREAS OF **XXXXXXX** COUNTY, INDIANA

This notice is given to you because of your application for a Location Improvement Permit to build or move a home into an area of **XXXXXXX** County that is zoned for Agriculture.

The purpose of this notice is to assure you are aware that all agricultural operations are allowed in this area.

Agricultural activity may include, but is not limited to, grazing of livestock, confined feeding of livestock, application of animal manure to land, application of pesticides to fields and growing crops, creation of dust from field operations and noise from livestock and machinery operations at all hours.

Single family dwellings are permitted uses of land in an Agricultural Zone, and this is not restricted to farm families. However, people who choose to live in these areas must understand that agricultural operations may be occurring nearby.

Indiana has a "RIGHT TO FARM" law that protects farm operations from unwarranted nuisance suits by neighbors who move next to an existing farm operation. Farm operations do not constitute a nuisance so long as they are not negligently maintained, do not endanger human health and do not cause bodily injury to third parties.

By signing this notice form you verify that you have received it, read it and understand it. You are not giving up the right to seek redress for negligence by individuals associated with a farm operation or by other residents of the area.

MY SIGNATURE CERTIFIES THAT I HAVE READ THIS NOTICE AND I UNDERSTAND IT.

Printed Name

Signature

Street Address

Date

City, State, Zip Code

Permit Number